

Social Space for Deliberative Democracy

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I consider the politics of place from the vantage of deliberative democracy, an ancient idea that has enjoyed a remarkable renaissance in recent political theory. Deliberative democrats, I claim, fail to address adequately the question of the place of this form of politics within the institutional structures of advanced welfare states. The effort to adapt it to inhospitable social and political circumstances distorts the normative ideal of deliberative democracy at the same time that it gives it an air of unreality. Deliberative democracy is either presented as a formal ideal whose implications for political practice as we know it are hard to discern, or it is accommodated to institutional structures poorly suited to house broad-based deliberative decision making. Yet the extraordinary revival of deliberative democracy reflects the increasing inadequacies of alternative approaches to setting out convincing theories of political legitimacy and justice. The contradictions that infect contemporary democratic theory thus reflect real tensions between the requirements of legitimacy and the main forms in which politics, power and law are organized in contemporary social worlds.

In this essay I analyze this tension and offer a suggestion as to how it might be reduced. I review briefly the grounds for concluding that deliberative democracy represents the practical best account of political legitimacy in circumstances of diversity. I then develop the claim that the institutional forms in which democracy is currently (partially) realized strongly discourage the broad based participation in deliberation that political legitimacy requires. I finally propose that we examine new forms of governance emerging within gaps in existing political structures; first, to determine if they might

create the social space required for deliberative democracy, and second, to ascertain whether they might be systematically developed into an alternative and potentially more legitimate mode of organizing political life. This alternative, I suggest, supports a conception of democracy that is decentered but integrated, one in which persons participate in a wide variety of local yet interconnected deliberative forums for democratic decision-making. Thus local or place-based politics play a crucial role in the complex forms in which deliberative democracy must be realized.

A remarkable convergence is underway in political theory. Communitarians and liberals, feminists and libertarians, rational choice theorists and advocates of post-modern politics, all of whose initial philosophical allegiances lay elsewhere, join ranks with critical theorists and democrats who have long located both the normative foundations and liberating potential of modernity in the idea of public deliberation. There are varied paths to this democratic plateau, but most lead through the problem of diversity. Wide-ranging cultural, identity and value diversity increases the sources of abiding conflict on fundamental moral and political issues at the same time that it constricts the resources of agreement present in a society. It generates reasonable disagreement about the requirements of social justice, the character of society, and policy issues, as the wide range of views held by persons influences their ideas and judgments on these matters. It becomes increasingly implausible for a work of political theory to claim that its principles and ideals, the ideas and conceptions on which it is built, or the main institutional forms and policy positions it recommends should be the subject of free and reasoned agreement. This central trope of political theory—offering a robust set of

substantive conclusions as supported by the consensus of all reasonable or rational persons—is strained to the point of breaking in circumstances of extensive diversity.

In place of the appeal to an idealized consensus, deliberative democrats maintain that agreement must be an actual political achievement and that democratic deliberation is the form of politics best able to produce such agreement. The basic idea of deliberative democracy is that the opinion of the public and the will it directs can serve as legitimate sources of coercive political power if, and only if, they are formed in processes in which public deliberation plays a constitutive role. Public deliberation refers to a process in which participants seek to justify their preferences concerning collective political decisions by offering convincing reasons to all concerned free and equal persons. On the deliberative view, offering and responding to reasons is the fundamental mode of political engagement. While deliberation is by itself rarely decisive in the disposition of an issue, what differentiates deliberative institutions are the conditions, first, that participants must aim to secure each other's agreement by publicly deliberating before a vote is taken and, second, that their votes must be informed by what they learned through deliberation.

The basic idea of deliberative democracy can be elaborated into competing conceptions of democratic politics depending on the details of how deliberation is understood, the way it enters the structure of a political theory, and the institutions it is held to require. But to succeed, deliberative democrats of all stripes must be able to demonstrate that deliberation reliably serves to promote political agreement in circumstances of diversity. Much recent work on deliberative democracy concentrates on elaborating formal models of deliberation precisely to demonstrate that it does contain the

requisite powers. I believe that many of these accounts unduly inflate the robustness of deliberation in conditions of diversity. However, I also believe that under certain circumstances—most importantly those in which participants broadly endorse an idea of cooperative democracy—deliberation does achieve the robustness required to reliably serve as a source of legitimacy in circumstances of diversity. If this is correct, then deliberative democracy presents the best practical account of political legitimacy in circumstances of extensive diversity.

Deliberative democrats, however, in concentrating on the formal capacities of deliberation in circumstances of diversity, either neglect the question of the kinds of institutions required if their models of deliberation are to be realized in actual political decision-making, or simply assume that these models must be realized within the rough confines of existing state structures. But for deliberation to do the work of generating political legitimacy in circumstances of diversity, the process and lessons of deliberative learning must be diffused broadly, so that all concerned can participate in this learning and accept the legitimacy of the decisions it generates. Deliberation can produce mutually acceptable political decisions in conditions of deep diversity because it requires participants to wrestle with the particularity of both their own claims and those of others, learning in the process and often changing their minds. The transformative powers on which this account of democratic legitimacy relies are only activated through actual direct participation in diverse deliberation.

The main institutional forms of advanced welfare-states, however, preclude the broad-based participation in empowered democratic deliberation that is required to generate political legitimacy and justice in circumstances of diversity. The idea of

deliberative democracy, as attractive as it is when formally modeled, seems deeply at odds with the contemporary practice of politics. I present this objection by canvassing, in summary and perhaps exaggerated fashion, two sets of considerations that I assume will be at least generally familiar, if not wholly uncontroversial. These claims about the tendency of institutions of representative decision-making and bureaucratic administration to suppress democratic deliberation stand, I hope, at least as correctives to some of the main tendencies in contemporary theories of deliberative democracy.

Consider then two clusters of problems concerning the absence of social space for deliberative democracy, beginning with those that result from the nearly exclusive reliance on representative decision-making in advanced welfare state societies.¹ Representative institutions of democratic decision-making tend to channel the formation of public opinion and will into forms of preference-aggregation that are incompatible with the basic idea of deliberative democracy.² This is an unavoidable consequence of the difficulties that attend aggregating the views of a large number of persons when their

This article was published in *The Good Society*, (spring 2001).

¹ For a broad and comprehensive overview of the forms in which democracy is institutionalized in advanced welfare state societies see Robert Dahl, *On Democracy*, (New Haven: Yale University Press, 1998), Part III, pp.83-141. For a more detailed analysis, see G. Bingham Powell, Jr., *Elections as Instruments of Democracy*, (New Haven: Yale University Press, 2000). I do not mean to deny that many actually existing democracies employ variously structured referenda and initiative mechanisms that represent a form of direct democracy. (For an overview of these mechanisms, see Thomas E. Chronin, *Direct Democracy: The Politics of Initiative, Referendum and Recall*, (Cambridge: Harvard University Press, 1992). But these mechanisms represent forms of direct aggregative, not deliberative democracy.

² Though I believe that this claim is valid, the question of the relationship between differently structured institutions of representative decision-making and their tendencies to encourage or discourage internal and more broadly-based deliberation is an important question requiring further empirical research. On the general topic of the relationship between social and institutional structures and deliberatively formed public opinion and will, Habermas' work is exemplary. But Habermas and those indebted to his work do not focus specifically on the issue of the relationship between representative institutions and public deliberation. See *The Structural Transformation of the Public Sphere*, Thomas Burger, trans. (Cambridge, MA: MIT Press, 1989), especially pp.159-74, 211-21, and 236-250; the contributions to Craig Calhoun, ed., *Habermas and the Public Sphere*, (Cambridge, MA: MIT Press, 1993), especially the essays by Nancy Fraser, Nicholas Garnham, Michael Warner, and Habermas; and Habermas, *Between Facts and Norms: Contributions to a*

input is directed primarily into voting for candidates in occasional elections. Representative institutions as such must aggregate constituencies along one line or another: persons must be combined to be represented.³ This unavoidable tendency is inherently suspect from a deliberative perspective. Reasons connect to forms and contexts of life in ways that make them hard to represent, and good reasons can only be identified against the background of a conversational process of reasoning. At its best, representation encourages persons to organize their political identifications around a limited cluster of salient issues, and this organization tends to rigidify since it conditions subsequent processes of decision-making and constituency formation in ways that discourage on-going revision of beliefs through a broadly accessible deliberative process. Thus a political process that relies exclusively on representative decision-making has an inherent tendency to elicit and aggregate expressed preferences, rather than encouraging the development of deliberatively generated public reasons.

Moreover, exclusive reliance on representative institutions also contributes to the atrophying of the informal public spheres of civil society in which genuinely public opinion must come into being. In these circumstances, democratic decision-making tends to operate at a great remove from ordinary citizens, discouraging deliberation in everyday life contexts. These contexts lack structured social space hospitable to deliberation, while their connection with decision-making is too attenuated to motivate and discipline broad-based regular participation. Further, so long as civil society remains home only to an informal public sphere that lacks clear institutional structure, the exchange of ideas

Discourse Theory of Law and Democracy, William Rehg, trans., (Cambridge: MIT Press, 1996), pp.359-387.

³ See Melissa Williams, *Voice, Memory, and Trust: Marginalized Groups and the Failings of Liberal Representation*, (Princeton: Princeton University Press, 1998), pp.25-6.

necessary to form public opinions is channeled through mass media that are, by themselves, poorly suited to the task. Here content is ever more carefully tailored to market demand. As a result, little attention is focused on politics and that which is serves more often to report on political events than to foster an exchange of reasons. Further, on those rare occasions when political exchanges do occur, they tend to be highly stereotyped presentations of the prevailing opinions of the main parties. Private ownership of most media and the production values of those who manage their content clearly play their part here.⁴ But the lack of deliberative content also reflects a genuine lack of popular interest in deliberative public opinion formation in an institutional setting that furnishes insufficient incentive and space for popular participation in this process. Sole reliance on representative decision making tends then to disorganize the public spaces of civil society, producing at best a phantom public sphere.⁵

Finally, to the extent that deliberation persists in an inhospitable civil society, it is not reliably transmitted to representative arenas. The distance is too far, the connections too attenuated, and the formal channels of communication too easily occupied or captured by organized interests. Institutions of representative decision-making concentrate both political power and the channels through which political influence moves, enabling powerful social interest groups to bypass costly and uncertain adventures in public deliberation and to focus instead on controlling these channels. As a result, political parties and organized interest groups, far from amplifying deliberative inputs originating in civil society, primarily aim to act on the disorganized public spheres

⁴ See Robert Waterman McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, (New York: New Press, 2000).

⁵ I borrow this phrase from Bruce Robbins. See Robbins, ed., *The Phantom Public Sphere*, (Minneapolis: University of Minnesota Press, 1993).

of civil society to secure assent to policy programs generated elsewhere. Cut off from its roots in civil society, representative decision-making loses its connection to deliberatively formed public opinions.

A second cluster of problems concerns the administrative state. Contemporary democratic theory does not sufficiently attend to the fact that many political decisions are no longer made by representative legislatures but instead delegated to relatively autonomous administrative agencies. The need to rely on such agencies follows from the very extent and complexity of the tasks governments seek to accomplish and the contexts in which they are pursued. These circumstances make it necessary for representative legislatures to delegate the details of policy making to agencies with more extensive personnel and operations, and make it impossible for legislatures to effectively oversee these operations. At the same time, to maintain at least the tenuous connection between administrative and legislative lawmaking, administrative agencies are structured to resist more direct democratic input from below—that is from those directly affected by the policies they generate. Administrative agencies and courts make law and policy, yet resist democratic input from both above and below.⁶

Further, it is far from clear that the administrative state has the capacity to implement the policy agenda that might emerge from an effectively institutionalized deliberative democracy. Centrally enacted and bureaucratically administered law is intrinsically limited as a medium for solving collective problems for two reasons. First

⁶ In general, recent legal scholarship has been much more attentive to these issues than contemporary democratic theory. For an excellent overview of the democratic shortcomings of administrative law, see Jody Freeman, “The Private Role in Public Governance,” *New York University Law Review*, 75 (June, 2000). For an up to the minute account of the evolution of the ‘iron triangle’ between representatives, agency officials and interest groups, see Rebecca Adams, “GOP, Businesses Rewrite the Regulatory Playbook,” *Congressional Quarterly Weekly*, Vol. 59, No. 18, (May 5, 2001), pp.990-996.

those making law frequently lack the specific information required both to anticipate areas in which new problems and risks are emerging and to determine if policies and regulations are effective, appropriately administered, or complied with. Second, the types of policy most readily implemented using this type of law and administration frequently prove self-defeating or counterproductive. This is because the necessary generality of this form of policy makes it an overly blunt tool for addressing variable and fluid problems affecting diverse communities. The generality and inflexibility of this type of policy lead to conflicts with the particularity of the needs, beliefs and interests of the specific communities or actors it addresses.

While we value democracy intrinsically for its ties to popular sovereignty, liberty and equality, we also value democracy for its promise that we will be rewarded for our participation by extending our capacity for control over some main features of our social worlds. But democratic practice that has recourse only to the bureaucratized instruments of governance of the welfare state lacks credibility in this respect. The perception that democratic politics is ineffective in turn undermines both its legitimacy and the desire to engage in the demanding work of deliberation. The normative content of democracy, however counterfactual, needs to have some credibility if its practice is to be legitimate and participation sustained.

Representative decision-making and centrally enacted and administered law, the dominant modes of organizing politics in contemporary states, tend to marginalize, disempower, disorganize and generally discourage democratic deliberation, while encouraging preference aggregation in its place. The effort to reconcile an understanding of legitimacy that requires broad-based participation in political deliberation with these

institutional forms results in two prevalent shortcomings in the theory of deliberative democracy. First, many democrats significantly underestimate the ways in which the contemporary organization of politics discourages deliberation, accentuating the rarely realized best potentials of these institutional forms while overlooking their usual tendencies. Secondly, given the ‘hard fact’ of this institutional context, the softer stuff of ideals and principles is compromised to fit these political forms. Unwilling to let our normative ideals simply stand in critical tension with a social reality in which they cannot be realized, we distort the basic normative content of democratic legitimacy so as to be able to map it onto institutional forms that have evolved according to a hostile logic.

It is in this institutional and intellectual context that I think deliberative democrats should be particularly eager to explore alternative modes of institutionalizing democracy. It is for this reason that I want to call attention to an emerging alternative mode of organizing politics which I refer to as direct and deliberative problem solving. In presenting a concise overview of a this novel form of governance, I follow the approach taken by those who analyze its operations and advocate its extension, constructing an ideal type based in part on reforms currently underway, and in part on combining, generalizing and further developing separately evolved aspects of the actual practice.⁷

7 The scholars whose work I have in mind include Charles F. Sabel, Archon Fung, Stephen Page, Joshua Cohen, Michael C. Dorf, Oliver Gerstenberg, Eric Olin Wright, Bradley Karkkainen, and Jody Freeman. For main writings on the subject see: Sabel, “Design, Deliberation, and Democracy: On the New Pragmatism of Firms and Public Institutions,” (Paper presented to the conference on Liberal Institutions, Economic Constitutional Rights, and the Role of Organizations, European University Institute, Florence, December 15-16, 1995); Cohen and Sabel, “Directly-Deliberative Polyarchy,” *European Law Journal*, Vol. 3, No. 4, (Dec., 1997), 313-342; Gerstenberg, “Law’s Polyarchy: Comments on Cohen and Sabel,” *European Law Journal*, Vol. 3, No. 4, (Dec., 1997), pp.343-58; Dorf and Sabel, “A Constitution of Democratic Experimentalism,” *Columbia Law Review*, Vol. 98, No.2, (March 1998), pp.267-473; Fung, *Street Level Democracy: A Theory of Popular Pragmatic Deliberation and Its Practice in Chicago School Reform and Community Policing, 1988-1997*, (Cambridge, MA: Dissertation submitted to the Massachusetts Institute of Technology Political Science Department, 1999); Page, *Reform in Progress: The Emergence of Collaborative Adjustment for Human Services in the 1990s*, (Cambridge, MA: Dissertation submitted to the Massachusetts Institute of Technology Political Science Department, 1999); Freeman,

The distinguishing characteristics of direct and deliberative problem solving (DDPS) include the following: (1) it creates opportunities for the direct involvement of those directly affected by policy measures and gives them an active role in formulating and enacting these policies; (2) it uses public deliberation as a main mechanism for setting policy agendas, adopting specific measures, and monitoring their implementation; (3) it brings persons together to participate in direct and deliberative democracy because they share common problems and because they believe that better solutions are available through collaboration; (4) it is practiced in decentered, often local, jurisdictions between which there is overlap and federation; (5) these local units are supported and supervised in a variety of ways by a variety of more centralized jurisdictions, so that power and/or resource-generation are not simply devolved onto them; (6) unidirectional command relationships between the various units and jurisdictions are avoided in favor of collaborative negotiations to accomplish their shared ends and to regulate their conflicts.

Combinations of these six elements have emerged in a broad variety of contexts including reforms in family and children's service provision in specific states in the US, police and school reform in Chicago, environmental, workplace and public safety regulation in the US and Europe, and local and regional economic development schemes

"Collaborative Governance in the Administrative State," *UCLA Law Review*, Vo. 45, No. 1, (1997); Gerstenberg and Sable, "Denationalization and the Very Idea of Democratic Constitutionalism: The Case of the European Community," (Prepared for Presentation at the American Political Science Annual Meeting, September 2-5, 1999, Atlanta, GA); Archon Fung, Bradley Karkkainen, and Charles Sabel, *Beyond Backyard Environmentalism*, (Boston: Beacon Press, 2000); and the contributions to the "Special Issue on Deliberative Democracy," *Politics and Society*, Vol. 29, No.1, March 2001. In the following discussion of DDPS I merely synthesize the works cited in this note. My contribution to this literature, if any, is only in speculating as to how this alternative institutional structure might be more systematically developed, and the implications this development might have for bringing the practice of democratic decision-making more closely in accord with the idea of deliberative democracy.

and city budget planning in Latin America.⁸ When these elements do appear, they tend to transform the very nature of governance, bringing about an emergent restructuring of previously bureaucratic forms from within. This process of “bootstrapping reform” achieves systematic and self-reinforcing change not because it is directly sought but as a result of a concatenation of small changes adopted to accomplish specific ends.⁹

Direct and deliberative problem solving occurs in complex organizational forms. As opposed to decisions being made in a single arena and then implemented through discrete and subordinate agencies, policy is both generated and implemented in a variety of jurisdictions operating at a variety of levels from the highly local to the highly centralized. While there are typical divisions of labor based on competence and resources, there is no necessary unidirectional authority relationship between these levels. Instead there is both overlap and on-going collaboration and negotiation. These processes of collaboration and negotiation determine the respective boundaries and the division of tasks and responsibilities between units. The overall organizational form is thus one of tiered or federated governance collaboratives that create a multi-level, flexible deliberative problem solving process. There is no necessary structure to or limit on the number of levels on which governance collaboratives operate. Similarly, there is no necessary a priori division of labor and responsibilities between different levels or jurisdictions, for this is itself determined through collaborative deliberation between them. But a main advantage of direct and deliberative problem solving is its ability to adapt general policy goals to diverse and fluid local contexts by allowing local

⁸ See the contributors to the *Politics and Society* symposium, Page, *Reform in Progress*, and Gerstenberg and Sable, “Denationalization and the Very Idea of Democratic Constitutionalism.”

communities (or those otherwise directly impacted by policy aims) to design and implement the more specific policies through which general goals can be accomplished. There is also a strong emphasis on decision-making units that allow for direct and deliberative participation and that therefore tend to be 'local' in the sense of bringing together persons united by specific common concerns.

While it is too early to predict the overall consequences of a more general adoption of direct and deliberative problem solving, the analysis of its nascent form suggests that it may represent a systematic alternative to the bureaucratic-administrative instruments of governance characteristic of advanced welfare states. It is precisely in conceiving this alternative that I believe the political theory of deliberative democracy may be able to make a constructive contribution. The challenge is to envision a capillary practice of democracy capable of creating the social space for broad-based and empowered democratic deliberation while channeling public reason to where the action is in a world of differentiated, mobile and interconnected social forces. In place of a state-centered conception of democracy, in which a society's efforts to influence itself are channeled into the centralized and formally constituted public spheres of legislatures and then back out into society, democracy would be re-imagined with decision-making decentered in the wide variety of locations where political problems themselves arise. Neighborhoods, municipal regions, workplaces, schools, power plants, and a multiplicity of other sites constitute the social spaces in which people would practice democracy, organized in the general form of direct and deliberative problem solving efforts. For, in such a decentered democracy, both deliberation and sovereignty would be dispersed but

⁹ See Charles F. Sabel, "Bootstrapping Reform: Rebuilding Firms, The Welfare State, and Unions," *Politics and Society*, Vo. 23, No. 1, (March 1995), pp.5-48; Page, *Reform in Progress*, pp.13-5 & 215-9;

integrated within local, regional, national, and supranational forums, each negotiating its jurisdiction and competencies with the others, usually in the medium of democratic deliberation itself.

This is nothing more than the sketch of a suggestion, I hope more tantalizing than frightening. To develop it into a more plausible course of reform, considerable work remains. Direct and deliberative problem solving developed in its current diverse and incomplete forms not to create social space for or to extend the capacities of deliberative democracy, but as a pragmatic response to failures of more centralized and bureaucratic modes of organizing politics. The question of whether it might be systematically developed requires further empirically based, though necessarily speculative, analysis.¹⁰ It will also be necessary to rethink the very idea of deliberative democracy abandoning the assumption that it must be realized in a hostile institutional environment. This, in turn, could lead to reconceiving a number of key political ideas, including sovereignty, citizenship, accountability, the rule of law and the public sphere. It is impossible to assess the full implications of direct and deliberative problem solving until this work has begun, and this is not the place to try to anticipate the results. In the meantime, considering this possibility at least helps to see more clearly our need for democratic institutions that do not stand in irreducible tension with the requirements of political legitimacy and hence for forms of politics that create social space for deliberative democracy.

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and Dorf and Sabel, pp.290n & 309.

¹⁰ Dorf and Sabel's comprehensive proposal for the development of DDPS within a revitalized framework of American constitutional law exemplifies the kind of work required here.